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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958.

No. 153.

NORTON R. GANGER, L. C. BETHART, THOMAS B. HAMILTON ET AL., APPELLANTS,

VS.

CITY OF MIAMI, A MUNICIPAL CORPORATION, APPELLEE.

APPEAL FROM THE SUPREME COURT OF THE STATE OF FLORIDA.

BRIEF OF APPELLANTS.

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APPEAL FROM THE SUPREME COURT OF THE STATE OF FLORIDA.

BRIEF OF APPELLANTS.

(a) OPINIONS OF COURT BELOW.

The opinions of the Supreme Court of Florida in these causes are reported in 101 So. 2d* 116 and 123. Copies of these opinions appear in the record at Pages 32 *et seq.*

*This volume does not contain the original opinion which is included in the record at page 32.

(b) JURISDICTION OF THE SUPREME COURT.

Appellants brought suits against the City of Miami to enjoin the enforcement of certain special assessment liens imposed on plaintiffs' properties pursuant to Sec. 56 of Chapter 10847, Laws of Florida, 1925, as amended, being the statutory charter of the City of Miami, and to have such liens declared to be unconstitutional and void. The suits were filed in the Circuit Court of the Eleventh Judicial Circuit of Florida, in and for Dade County, where the properties lie and the City of Miami is situated. The decision of the Circuit Court was that the assessments were void because they were not supported by benefits and because the notice of the proceedings in which the assessments were imposed was constitutionally insufficient. The Supreme Court of Florida at first affirmed the decree of the Circuit Court on non-Federal grounds. A rehearing, however, was granted, upon which the Court, three Justices dissenting, reversed the decree. The latter decision held that the question of benefits was conclusively determined by the administrative proceedings based upon notice by publication, which the Court held to be sufficient. A petition for a second rehearing was timely filed by the appellants. This petition called the attention of the Supreme Court of Florida to the applicable and controlling decisions of this Court as to the sufficiency of notices by publication directed to resident property owners. This petition was denied on April 2, 1958.

Notices of appeal to the Supreme Court of the United States were duly filed in the Supreme Court of Florida on June 2, 1958 (R. 73, 76).

The jurisdiction of the Supreme Court to review such a decision by direct appeal is conferred by Title 28, United

States Code, Section 1257 (2). In the following cases, the Court has taken such jurisdiction on direct appeal:

Mullane v. *Central Hanover Bank & Trust Company*, 339 U. S. 306.

New York v. *New York, N. H. & H. R. Co.*, 344 U. S. 293.

Covey v. *Town of Somers*, 351 U. S. 141.

Walker v. *City of Hutchinson*, 352 U. S. 112.

Wisconsin Electric Power Company v. *City of Milwaukee*, 352 U. S. 948.

Lambert v. *The People of the State of California*, 355 U. S. 225.

(c) CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED.

The case involves Sec. 1 of Amendment XIV to the Constitution of the United States, which prohibits the deprivation of property without due process of law, and the denial of equal protection of the laws and Sec. 56 (A), Class 1, (C), (E), (F), (H), (J) (n), (L), (M), (N) and (O) of Chapter 10847, Laws of Florida, 1925, as amended, being the statutory charter of the City of Miami. The case also involves resolutions of the City Commission which were adopted pursuant to these statutory requirements. The charter requirements, the resolutions and the notices are too long to be quoted here. They are included in the appendix.

(d) QUESTIONS PRESENTED.

1. Is a resident property owner estopped to contest a special assessment lien for street resurfacing and to show that he was not specially benefited by such work because

he failed to file objections to the assessment in the administrative proceedings since it affirmatively appears: 1) that the attack on the assessment was by a plenary chancery suit authorized by state statute and prior decisions of the State Supreme Court; 2) that the suit was instituted as soon as the existence of the lien was discovered and within sixty (60) days of the final administrative action; 3) that in such suit the Court found that the assessment was void because the resurfacing bestowed no benefit on the assessed property; 4) that the owner had no actual notice of the proceedings and the only one which the municipality attempted to give was by publication in the classified advertising section of a large metropolitan newspaper; and 5) that the owner's name, address and interest in the property was known to and in the possession of the municipality, which actually sent him a bill for the assessment as soon as the administrative proceedings were concluded?

2. If a Florida statute requires abutting property owners in a particular municipality to file suit in the Circuit Court of Dade County within ten (10) days after confirmation of the special assessment roll, and the resident property owners had no notice of any of the proceedings in which the assessments were levied other than one published in the classified section of a local metropolitan newspaper, is such a limitation upon the right of abutting property owners to resort to the Court violative of the due process and equal protection clauses of the Federal Constitution?

(e) STATEMENT OF CASE.

To repair the damage caused by the wear and tear of traffic, the City of Miami resurfaced a number of its heavily traveled streets, which had originally been paid for

at the expense of the abutting owners, and again charged the cost against the abutting property. Claiming that the resulting improvement was of no special benefit to the assessed property, but that the benefit, if any, was to the general public, certain *resident property owners** including the named appellants Ganger and Hamilton filed complaints in two class actions in the Circuit Court of Dade County, praying that the assessments be declared void and enjoining their collection. The gravamen of the complaints was that the work did not benefit the property, that the assessments were imposed without notice and that the resulting liens constituted a taking in violation of the Constitution of the United States (R. 1).

It affirmatively appeared from the complaints that the only notices as to the proceedings which terminated by the imposition of liens were published in the local newspapers (R. 3).

The Circuit Courts of Florida have jurisdiction under Article V, Florida Constitution, over cases involving the legality of any tax, assessment or toll. An implementing general statute (Fla. Stat. 196.01) confers upon Courts of Chancery in Florida jurisdiction in all cases involving the legality of any assessment and *requires* that in such cases the Court shall inquire into and determine the legality, equality and validity of such assessment under the Constitution and laws of Florida, and shall render decrees setting aside such assessments that appear to be contrary to law.[1]

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*(Excerpts from Assessment Roll Dist. H-477; City's unnumbered Exhibit and City's Exhibit No. 1, Assessment Roll Dist. H-503. R. 78, 80, 100, 102.)

[1]The Statute also requires payment or a tender into Court of the tax due.

The form and manner in which the suits were filed is sanctioned by Equity Rule 3.6 (patterned after old Federal Equity Rule 38), permitting the bringing of class actions, and the procedure followed has been expressly approved by the Florida Supreme Court. *City of Miami Beach* v. *Tenney*, 11 So. 2d 188.

The Appellee moved to dismiss the complaint in the Hamilton suit. The motion was denied and the City appealed. The Supreme Court by a majority decision affirmed the decree, thereby sustaining the sufficiency of the complaint. *City of Miami* v. *Hamilton*, 73 So. 2d 715.

In the answer which was filed after the remand of the cause the City asserted, among other grounds of defense, that the plaintiffs were estopped to contest the validity of the assessment proceedings. This estoppel rested upon the contention that the city had determined that the property had been benefited to the extent of the assessment, and had confirmed the assessment roll and that the resulting liens were incontestably valid because the plaintiffs had not filed objections to such assessments with the City Commission within the time required by the notice by publication above referred to. It was also asserted that the property owners had likewise failed to file a proceeding in the Circuit Court of Dade County, Florida, as required by the City Charter, Ch. 10847, Laws of Florida 1925, within ten (10) days after the Commission had confirmed the assessment roll. It was therefore alleged that the administrative proceedings were conclusive and that the plaintiffs had no right to object thereto (R. 13).

The Hamilton and Ganger suits were thereupon consolidated for trial and, upon evidence taken, the Circuit Court found that the determination of benefits by the City Commission rested upon the publication of notices in the

local newspaper, and that such notices were insufficient as a matter of law. The Court also found that no special benefits resulted from the alleged improvement and that the property owners were not estopped to show this fact by reason of the determination based upon constructive service. Final decrees were entered for the plaintiffs in both suits.[2] (R. 22, 27).

---

[2](R. 27) The decree in the Hamilton suit recited in part that:

"1. On November 19, 1952, the defendant City enacted Resolution No. 25006, in which it created Highway Improvement District No. H-503, comprised of the following street or thoroughfare in the City of Miami, Florida, namely (Describing property):

2. Thereafter, the City caused to be published in the classified section of The Miam Herald a notice requiring all interested persons to take notice that a meeting of the City Commission at 9:30 o'clock A. M., on December 3, 1952, would be held, at which objections would be heard to the confirmation of such resolution.

3. Thereafter, the defendant City resurfaced the street comprising said Improvement District No. H-503 by applying a 1/2-inch leveler course and a 1-inch surface course to the existing pavement. The base and the existing surface were in no wise disturbed. The existing curbings and gutters were in no wise altered.

4. The City imposed the cost of the resurfacing upon the abutting owners, with the exception of the intersections, which was paid for by the City.

5. The notice of the hearing of objections to the imposition of the assessment hereinabove referred to was insufficient as a matter of law in that it specified no place where the objections would be heard, and there was no designation in the notice of what City Commission was to hear objections, no designation of the city in which the street was located, or of what city the person filing the notice was Clerk. The notice was also insufficient because it was inserted in the classified section of The Miami Herald and in such a manner that it cannot be said that any reasonable person was put upon notice by it that their property was going to be subjected to a special assessment.

6. The resurfacing was necessary to keep the street in repair and facilitate the flow of traffic. The work was for the benefit of the general public, and the abutting owners received no special benefit.

The City appealed from the decrees in both suits to the Florida Supreme Court. That Court affirmed both decrees, three Justices dissenting (R. 32). In the majority opinion, the Court held that the assessments were invalid because the City had no power under its Charter to assess for resurfacing as distinguished from repaving. The Court considered that resurfacing was similar to repairing while repaving was much like reconstruction. On the federal ground as to lack of due process, the Court found against the contention of the property owners, saying (R. 32):

> "The Judge decided that the notice was insufficient and that the appellant lacked the authority to impose the cost of an improvement of this nature upon the property owners."

As to this the Court held (R. 35):

> "On the matter of the validity of the notice we must disagree with the chancellor, and by disagreeing, we cannot adopt the view that the property owners could ignore the notice and at this late date[3] successfully attack the action of the city, on the ground that due process had not been afforded them."

On rehearing, a majority of the Court reversed the decree. In so doing, the Court held that the notice by publication to resident property owners was sufficient as a matter of law. It concluded from this that the determination of benefits in the administrative proceedings based upon such notice was conclusive on the property owners and that they were estopped by such determination to contest the want of benefits.

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7. The cost of the resurfacing was paid for with funds from a surplus in the general fund accumulated over the course of years."

[3]The first suit was filed within 48 days after the date of confirmation.

This decision marked the first time that an opinion adverse to the property owners was rendered by the Supreme Court of Florida. It was, therefore, the first time that these Appellants had an opportunity or a right to complain of that Court's opinion with respect to the sufficiency of the notice under the due process clause.

The property owners filed a petition for rehearing, challenging the legality of this holding upon the grounds that it was contrary to decisions of the Supreme Court of the United States, with respect to the sufficiency of notices by publication on residents. The petition charged (R. 65):

> "4. In holding the notice of the confirmation of the assessment roll sufficient, and that the appellees were estopped to challenge the lack of benefits because they failed to object pursuant to the notice, the Court overlooked, or failed to consider that the procedure for the imposition of assessment liens is quasi judicial and that the requirements of procedural due process guaranteed by Amd. XIV, U. S. Const., must be complied with. In the case of residents, constructive notice, as attempted is violative of the rights secured by such amendment.
>
> *Walker* v. *City of Hutchinson*, 77 S. Ct. 200.
>
> *Mullane* v. *Central Hanover Bank & Trust Co. et al.*, 339 U. S. 306."

The petition for rehearing was denied, and these appeals followed.

The Appellee's motion to dismiss these appeals, or affirm on the ground that no substantial Federal question was presented to, or decided in, the State Supreme Court was deferred until the hearing on the merits. That Order provided as follows (R. 104):

> "Further consideration of the question of jurisdiction is postponed to the hearing of the case on the

merits. Counsel are directed to discuss the question of whether the constitutional issues were raised and decided below."

(f) SUMMARY OF ARGUMENT.

I.

The Federal question was adequately and timely raised in the *nisi prius* and appellate courts. The former decided the question in favor of the Appellants, and the latter against them.

II.

In order to be valid, special assessments must be supported by special benefits directly conferred upon the properties so assessed.

III.

Resident owners of properties so assessed are not barred from contesting the assessments because of a lack of benefits since the finding of the Commission imposing the assessment that benefits accrued to the properties was not based on evidence and rests only upon a notice published two times in the classified section of a local newspaper.

We will first discuss the question of whether the constitutional issues were raised and decided below.

(g) ARGUMENT.

I.

Issues in the State Courts.

The Amended Complaint alleges (R. 6):

> "The special assessment liens sought to be imposed upon the abutting property owners in Highway Improvement District H-477[1] are illegal and void and constitute taking of property in violation of the Constitution of the United States and of the State of Florida, upon the following grounds:
>
> The Notice was published in an inconspicuous place upon the classified advertising section of the MIAMI HERALD, a position in which it was least likely to attract attention of persons such as the plaintiffs and those on whose behalf this suit is brought.
>
> The improvements which the City made were of a general and public character, and not for the benefit of the abutting property owners."

The lower Court found that the Notice by Publication was insufficient and also that the resurfacing conferred no special benefits on the abutting property. On appeal to the Supreme Court, the City in its assignments of error specified the following (R. 26):

> "3. The Chancellor erred in finding that the Notice of Hearing of Objections to the Confirmation of the Resolution ordering Highway Improvement District H-477 was insufficient as a matter of law.

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[1]The City Charter provides for the creation of special assessment districts. To accomplish this, the City lumped together a number of streets which were designated as Highway Improvement Districts H-477 and H-503. H-477 is the district involved in the Hamilton case and H-503 is the one involved in the Ganger case.

4. The Chancellor erred in finding that the Notice was insufficient because it was inserted in the classified section of the 'Miami Herald'.

5. The Chancellor erred in finding that any reasonable person was not put upon notice that their property was to be specially assessed."

The Supreme Court of Florida in its first opinion, which affirmed the lower Court's decree (R. 32), directly passed upon the question of whether the newspaper publication complied with requirements of due process of law. That Court said (R. 35):

> "On the matter of the validity of the notice we must disagree with the Chancellor, and by disagreeing, we cannot adopt the view that the property owners could ignore the notice and at this late date successfully attack the action of the City, on the ground that due process had not been afforded them."

In the original dissenting opinion, the minority said (R. 39):

> "Holding as we do that the original notice* of the intention of the City of Miami to install these improvements and assess a portion of the cost against the abutting property was *valid in all respects*, the failure of the appellees to promptly assert their rights in the premises now estops them from maintaining an action, the ultimate objective of which is to declare the assessments invalid. It was the duty of the appellees to promptly assert their position when the City obtained jurisdiction of the improvement by virtue of the passage of the initial resolution and the giving of what we hold to be a valid and legal notice."

Justice Thornal, in a specially concurring opinion, said (R. 37):

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*Emphasis herein supplied unless otherwise noted.

"Here the trial judge specifically found that 'the work was for the benefit of the general public, and the abutting owners received no special benefit'. The record abounds in evidence more than adequate to sustain this conclusion.

For the foregoing reasons and the reasons announced by Mr. Justice Thomas on the other points, I would affirm the decree."

On petition for rehearing granted, the dissenters, joined by Justice Thornal, became the majority and overruled the original opinion which was in favor of the property owners. In so holding, the Court again considered the sufficiency of the notice, saying (R. 50):

"Holding then, as we unanimously do, that the *notice* discussed in the opinion by Mr. Justice Thomas was in all respects regular and in full compliance with the provision of the City Charter relating to special assessments for benefits, * * *"

A petition for rehearing—timely filed and adequately briefed—reasserted the property owners' contention that the proceedings were void for want of notice under the due process clause (R. 63).

Frequent decisions of the Supreme Court of the United States recognize its right to consider a case arising from a situation so presented.

In *Wilson* v. *The Black Bird Creek Marsh Company*, 2 Pet. 245, 250, Chief Justice Marshall said:

"The defendants in error deny the jurisdiction of this Court, because, they say, the record does not show that the constitutionality of the Act of the Legislature under which the plaintiff claimed to support his action, was drawn into question.

* * *

> * * * But we think it impossible to doubt that the constitutionality of the Act was the question, and the only question which could have been discussed in the State Court. That question must have been discussed and decided.
>
> * * *
>
> * * * This plea draws nothing into question but the validity of the Act; and the judgment of the Court must have been in favor of its validity. Its consistency with, or repugnancy to the Constitution of the United States, necessarily arises upon these pleadings, and must have been determined. This Court has repeatedly decided in favor of its jurisdiction in such a case. Martin v. Hunter's Lessee, 1 Wheaton 355; Miller v. Nicholls, 4 Wheaton 311; and Williams v. Norris, 12 Wheaton 117, are expressly in point. They establish, as far as precedents can establish anything, that it is not necessary to state in terms on the record that the Constitution or law of the United States was drawn in question. It is sufficient to bring the case within the provisions of the 25th Section of the Judicial Act, if the record shows that the Constitution or a law or a treaty of the United States must have been misconstrued, or the decision could not be made. Or, as in this case, that the constitutionality of a state law was questioned, and the decision has been in favor of the party claiming under such law."

In *Chicago Life Ins. Co.* v. *Needles*, 113 U. S. 574, 579, the Court said:

> "The Supreme Court of Illinois did not, in terms, pass upon the claim distinctly made there, as in the court of original jurisdiction, that the statutes in question were in derogation of rights and privileges secured to appellant by the Constitution of the United States. But the final judgment necessarily involved an adjudication of that claim; for, if the statutes, upon the authority of which alone the auditor of state pro-

ceeded, are repugnant to the national Constitution, that judgment could not properly have been rendered."

In *Eureka Lake & Yuba Canal Co.* v. *Superior Court*, 116 U. S. 410, 415, the Court said:

> "It does not appear affirmatively on the face of the record that the orders of the Superior Court were objected to in the Supreme Court on the ground that, in the absence of personal service of the order to show cause on some officer or authorized agent of the corporation, the judgment in the contempt proceeding was without due process of law, and therefore contrary to the fourteenth amendment of the Constitution of the United States; yet that point is made here, and it is possible its decision was necessarily involved in the final order that was made. For this reason the motion to dismiss is overruled: * * *"

In *Arrowsmith* v. *Harmoning*, 118 U. S. 194, 195, the appellant, by an assignment of error, asserted for the first time that his constitutional rights had been invaded. The Court said that it was not easy to see upon what ground the assertion was made that rights under the Federal Constitution had been denied. Nevertheless it took jurisdiction of the case, saying:

> "It was for this reason, perhaps, that the Supreme Court, while affirming the judgment of the District Court, took no notice of this assignment of error in its opinion. The decision, however, necessarily involved a denial of the right which was claimed in this way, and thus we probably have technical jurisdiction. For that reason the motion to dismiss must be denied. * * *"

In *Kaukauna Water-Power Co.* v. *Green Bay & M. Canal Co.*, 142 U. S. 255, 269, the constitutional inhibition relied upon was not distinctly put at issue by the pleadings

or passed upon in the opinion of the Supreme Court of Wisconsin. In taking jurisdiction, this Court said:

> "* * * This Court has had frequent occasion to hold that it is not always necessary that the Federal question should appear affirmatively on the record, or in the opinion, if an adjudication of such question were *necessarily* involved in the disposition of the case by the state court. Wilson v. Marsh Co., 2 Pet. 245; Armstrong v. Treasurer, 16 Pet. 281; Insurance Co. v. Needles, 113 U. S. 574; 5 Sup. Ct. Rep. 681; Canal Co. v. Superior Court, 116 U. S. 410, 6 Sup. Ct. Rep. 429."

In *McCullough* v. *Commonwealth of Virginia*, 172 U. S. 102, 117, this Court held that a state court could not prevent review by failing expressly to pass upon a Federal question. It said.

> "* * * Could it be said that the silence of the state court in its opinion charged the scope and effect of the decision? In other words, can it be that the mere language in which the state court phrases its opinion takes from or adds to the jurisdiction of this Court to review its judgment? Such a construction would always place it in the power of a state court to determine our jurisdiction."

In *State of Minnesota* v. *National Tea Co.*, 309 U. S. 551, 557, the State of Minnesota brought certiorari to review a decision of the Supreme Court of that State. It was urged by the respondent that the petition should be dismissed upon the ground that when the state court decision rests on two grounds, one involving a federal question, and the other a non-federal question, this court would not take jurisdiction. In denying the motion of the respondent and vacating the judgment and remanding the cause, the Supreme Court said:

> "Intelligent exercise of our appellate powers compels us to ask for the elimination of the obscurities and

ambiguities from the opinion in such cases. Only then can we ascertain whether or not our jurisdiction to review should be invoked. Only by that procedure can the responsibility for striking down or upholding state legislation be fairly placed. For no other course assures that important Federal issues, such as have been argued here, will reach this Court for adjudication; that state Courts will not be the final arbiters of important issues under the Federal Constitution; and that we will not encroach on the constitutional jurisdiction of the states. This is not a mere technical rule nor a rule for our convenience. It touches the division of authority between state Courts and this Court and is of equal importance to each. Only by such explicitness can the highest courts of the states and this Court keep within the bounds of their respective jurisdictions."

The trial court expressly held that the assessments were not supported by benefits and that the newspaper notice did not estop the property owners from asserting this fact.

The Florida Supreme Court first held that the notice was sufficient, but that the City lacked authority to assess for resurfacing. It concluded that the liens were void on a non-federal ground. On rehearing, the Court expressly held that the notice was sufficient and *for that reason* the property owners could not assert a lack of benefits. Thus legislative action was deemed consistent with due process. *Carlson* v. *California*, 310 U. S. 106.

This Court has repeatedly held that where a constitutional privilege has been denied for the first time by a ruling made on an appeal, a litigant thus surprised may timely raise the constitutional question on petition for rehearing.

Saunders v. *Shaw*, 244 U. S. 317.

Brinkerhoff-Faris Trust & Savings Co. v. *Hill*, 281 U. S. 673.

State of Missouri ex rel. Missouri Ins. Co. v. *Gehner, Assessor*, 281 U. S. 313.

Great Northern Ry. Co. v. *Sunburst Oil & Refining Co.*, 287 U. S. 156.

In *Brinkerhoff-Faris Trust & Savings Co.* v. *Hill*, 281 U. S. 673, 677, the Trust Company brought a suit against the County Treasurer to enjoin him from collecting taxes assessed against shares of stock. It was alleged that the assessment was void and discriminatory and violated the Fourteenth Amendment of the Federal Constitution. The defendant's answer denied all the allegations of discrimination, and alleged as an affirmative defense that the plaintiff had not pursued its administrative remedies before the State Board of Equalization, and was therefore guilty of laches. The trial court refused the injunction and dismissed the bill without opinion or findings. The Supreme Court of Missouri affirmed because, since plaintiff had not complained to the tax commission, "it was clearly guilty of laches in not so doing." In so holding, the Court overruled an earlier decision to the effect that the administrative body was without authority to grant such relief. The court reversed the judgment of the Supreme Court of Missouri, saying:

> "The plaintiff seasonably filed a petition for a rehearing in which it recited the above facts and asserted, in addition to its claims on the merits, that, in applying the new construction of article 4 of Chapter 119 to the case at bar, and in refusing relief because of the newly found powers of the commission, the court transgressed the due process clause of the Fourteenth Amendment. The additional federal claim thus made was timely, since it was raised at the first opportunity."

The Supreme Court of Florida necessarily upheld the constitutionality of the Charter requirements with respect to the sufficiency of the notice. The binding effect of the administrative proceeding rested upon the sufficiency of the notice and the sufficiency of the notice depended upon its compliance with controlling provisions of the XIV Amendment. Assessments which are not based on notice are void, and void assessments raise no estoppel. *Gulf View Apartments, Inc.*, v. *City of Venice*, 108 Fla. 41, 145 So. 802. To say, therefore, that the Court did not necessarily decide that the notice measured up to constitutional standards is not correct.

Support, however, for our position does not rest upon implication alone. As we have pointed out (9, 10) the Court held that the notice was "valid in all respects".

Plainer or more direct language could hardly have been employed. Thus the Court both expressly and by necessary implication has ruled upon the federal constitutional question that was raised by the complaint in the Circuit Court and raised by the City's assignment of errors in the Supreme Court.

The property owners have vigorously and stubbornly asserted their rights under the Federal Constitution throughout these long and bitterly contested proceedings. The contention that the case was decided on other grounds is wanting both in fact and candor.

II.

The Assessments Were Not Supported by Benefits.

The general rule is that property not specially benefited by improvements cannot be specially assessed therefor. The Florida Supreme Court has so held many

times. In *Stockman* v. *City of Trenton*, 132 Fla. 406, 181 So. 383, the Court said:

> "The Courts of this country are committed to the doctrine that special assessments should in no case exceed the benefits they confer to the property improved and that if the governmental entity imposes an assessment in excess of benefits, it will be held to the extent of the excess as the taking of property without due process of law. Atlantic Coast Line Railroad Company v. Lakeland, 94 Fla. 347, 115 So. 669; Abell v. Town of Boynton, 95 Fla. 984, 117 So. 507; Atlantic Coast Railroad Company v. City of Winter Haven, 114 Fla. xxv, 151 So. 321; McQuillin on Municipal Corporations, Vol. 5, 2240, 2d Ed."

In *Utley* v. *City of St. Petersburg*, 107 Fla. 6, 114 So. 58, the Court said:

> "This court has repeatedly held that special assessments for public improvements can only be justified upon the theory of special benefits accruing to the property assessed and an assessment not based upon this principle violates the organic law prohibiting the taking of private property for the public benefit without compensation."

The Court went even further. In the cited case the Legislature had attempted by special act to validate the municipal assessment. This act was held to be invalid, the Court saying:

> "It is the well-settled rule that a tax levy which could not have legally been made in the instance without violating organic law cannot generally be ratified, and that when resulting in a violation of substantial property rights a void tax levy cannot be legalized. See New Smyrna Inlet District v. Esch, (Fla.) 137 So. 1, and cases there cited; also, Tax Securities Corporation v. Borland, (Fla.) 137 So. 151.

In view of the above stated rule, it becomes unnecessary for us to discuss further the effect of chapter 15511, Sp. Acts 1931, as to this assessment. The assessment was void because of its arbitrary discrimination as above mentioned and violated the provisions of the organic law guaranteeing equal protection to all."

Lower Federal Courts have said the same thing. In *Atchison, T. & S. F. Ry. Co.* v. *City of San Diego et al.*, (D. C. Cal.) 34 F. 2d 293, 294, the Court said:

> "An assessment of the kind here to be considered will be deemed arbitrary and illegal, if, upon examination of the record of proceedings had, together with other evidence offered to show fully plain conditions which the assessing officers are presumed to have had before them, the conclusion is inescapable that the property assessed could not be benefited by the contemplated work, or that, if benefited, the benefit necessarily would be trivial or inconsequential."

The Court of Appeals affirmed the "well considered opinion." 45 F. 2d 11.

In *Lancaster* v. *Police Jury*, (D. C. La.) 254 Fed. 187, 189, Foster, J., said:

> "It is well settled that the Legislature may create taxing districts for the purpose of local improvements, such as roads, and also may delegate that authority to municipal corporations, or boards, or commissions. When this is done, the question of benefit to the land taxed is one of fact, to be finally determined by the taxing authorities, but subject, however, to the exception that the delegated body may not act arbitrarily, and impose a tax in utter disregard to the benefit to be derived by the property taxed."

These cases are in harmony with Federal Supreme Court opinions. See *Myles Salt Co.* v. *Iberia & St. M. Drainage Dist.*, 239 U. S. 478.

Appellees will probably counter with the contention that the City Commission determined that benefits accrued. The determination is void for want of notice, as we will show under Question III. Nonetheless such a finding, unsupported by evidence, is invalid, even if affected parties had had due notice.

In the case at bar, the administrative determination of liability simply recited that (App. 12, R. 92):

> "Whereas, no objections thereto were made by any person interested in, or affected by said assessment roll and the said assessment roll appearing, in all respects, regular and in accordance with the requirements and provisions of the City Charter;"

Such an unsupported declaration constitutes a denial of procedural due process since it is obviously arbitrary and capricious.

Gallegos v. *Nebraska*, 342 U. S. 55.

Cf. Frankfurter, J., in *Schware* v. *Board of Bar Examiners*, 353 U. S. 232.

In *Morgan* v. *U. S.*, 298 U. S. 463, 481, the Court in speaking of the effect of administrative findings held:

> "* * * For the weight ascribed by the law to the finding—their conclusiveness when made within the sphere of the authority conferred—rests upon the assumption that the officer who makes the findings has addressed himself to the evidence, and upon that evidence has conscientiously reached the conclusions which he deems it to justify. That duty cannot be performed by one who has not considered evidence or argument. It is not an impersonal obligation. It

is a duty akin to that of a judge. The one who decides must hear."

The Florida Supreme Court is in accord with this opinion. In *Fisher* v. *Board of County Commissioners of Dade County*, Fla., 84 So. 572, the Court said:

> "A 'special benefit assessment' must be levied according to the particular benefits received by the real property in question and in order to sustain the assessment, there must be some proof of the benefits other than the dictum of the governing agency."

In *Atchison, T. & S. F. Ry. Co.* v. *City of San Diego, et al.* (D. C. Cal.) 34 F. 2d 293, the Court said:

> "It is admitted by defendants that the finality which attends the determination of the city council, when it acts upon the protest of a property owner, assumes cases where that body acts within a fair and reasonable discretion upon the matter before it (which is presumed, prima facie), but that the protestant is not concluded if he is able to show that no fair rule of uniformity was adopted in making the assessment (Schaffer v. Smith, 169 Cal. 764, 147 Pac. 976), or that the assessment was made without regard to benefits to accrue to the property taxed (Spring Street Co. v. City of Los Angeles, 170 Cal. 24, 148 Pac. 217, L. R. A. 1918E, 197)."

The right to inquire into the support for the administrative finding was primarily one for the State Court to exercise. When the attack was made upon the administrative determination by the complaint in the Hamilton case, the Circuit Court held the complaint to be good as against the City's motion to dismiss. The Supreme Court affirmed this action, thereby expressly sanctioning the

challenge to the sufficiency of the administrative proceedings. *City of Miami* v. *Hamilton*, 73 So. 2d 715.[5]

After this early (1954) Supreme Court approval of its action, and in the exercise of its undoubted constitutional and statutory power (Const., Art. V, Sec. 6 (c) and Fla. Stat. 196.01), the Circuit Court assumed jurisdiction of the case (*City of Miami Beach* v. *Tenney*, 152 Fla. 126, 11 So. 2d 188) and inquired into and determined the legality of the assessment. Then pursuant to the statute, it rendered a decree setting aside the assessments as being contrary to law. In so doing, it found and *determined* that the work done was for the benefit of the general public and that the abutting owners received *no special benefit*.

As above pointed out (10), in a specially concurring opinion to the original majority opinion of the Florida Supreme Court, Thornal, J., said that the record *abounded* in evidence *more* than adequate to sustain the trial court's finding that the owners received no special benefit (R. 37).

These findings were not seriously challenged in the Florida Supreme Court by the City and come here with a conclusive presumption of correctness.

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[5]Prior to the last opinion herein, it had been the rule in the Florida Supreme Court that a determination of law on a prior appeal established the law of the case and put it beyond the power of the Court to overturn such decision on a subsequent appeal of the same case. *Hamel* v. *Danko*, Fla., 82 So. 2d 321, per Drew, J., the author of the last opinion in *City of Miami* v. *Ganger*, 101 So. 2d 116, which, in effect, overruled *City of Miami* v. *Hamilton*, 73 So. 2d 715.

III.

Resident Owners of Properties So Assessed Are Not Barred from Contesting the Assessments Since Benefits Are Lacking and Since the Administrative Finding Rests upon a Notice Published in the Classified Section of a Local Newspaper.

Any discussion as to the necessity and sufficiency of the notice involved in these cases requires a brief explanation of the working of the City's Charter regarding the making of street improvements and the imposition of special assessment liens to defray the cost thereof.

The legal machinery for accomplishing such objective is contained in Sec. 56 of the Charter and particularly Sub-Sections A, Class 1, C, E, F, H, I, M and N (App. 1 *et seq.*).

Briefly, the procedure is as follows: the City Commission adopts an initiating resolution by which it determines to do certain work. The resolution designates the property against which assessments are to be made, which then comprises a district. Thereupon the city manager prepares and files with the city clerk plans and specifications of the improvement together with an estimate of the cost. When he receives these plans, the clerk publishes one time in a daily newspaper of general circulation a notice stating that, at a meeting of the Commission on a certain day and hour not earlier than ten (10) days from such publication, it will hear the objections of all interested persons to the confirmation of the resolution. If objections are not so made they are to be considered as waived and if made and overruled the confirmation of the resolution shall be the final adjudication of the issues unless proper steps are taken within ten (10) days to secure relief in a court of competent jurisdiction.

Having thus taken these preliminary jurisdictional steps, the Commission proceeds either to let a contract for the work to others or itself to do it with its own employees. In either case a preliminary assessment roll is then prepared which is required to contain, among other matters, a description of the lots and parcels of land within the district and the amount to be assessed against each.

(In the cases at bar these assessment rolls as finally adopted were admitted in evidence as an un-numbered exhibit in the Hamilton case (Dist. H-477) and as Exhibit No. 1 in the Ganger case (Dist. H-503). These original exhibits were forwarded to this court by the Supreme Court of Florida. Excerpts from them, showing the properties of the named plaintiffs together with their names and addresses and the amount of the assessments, are in the printed record at pages 78, 80, 100 and 102.)

When the preliminary assessment roll is filed with the city clerk, he is required to publish a second notice once in each of two successive weeks in a daily newspaper of general circulation in the city, stating in such notice that at a regular meeting of the Commission held on a certain day and hour not less than twelve (12) days from the date of the first publication "all interested persons may appear and file written objections to the confirmation of the" roll.

The Commission has plenary power in this hearing to increase, reduce or cancel the assessments against "any and all" lots according to the special benefits which the Commission decides each lot has or will receive "but (it) *shall not* confirm any assessment in excess of the special benefits to the property assessed, and the assessments confirmed *shall be* in proportion to the special benefits."

The confirmation of the roll by the Commission makes it final and conclusive unless the complaining property

owner, within ten (10) days from the confirmation files a verified petition with the Clerk of the Circuit Court of Dade County setting forth that the assessment is excessive, in which case, and upon compliance with other procedural requirements of the act, the Court is vested with power to set aside assessments against particular lots or against the "entire district".

The Appellants' failure to object and pursue this statutory method for review gave the Florida Supreme Court the excuse for holding that they were estopped to complain. The Appellants' answer to this is that the notices were void, hence the determination of benefits was void. Therefore, they assert, a void act estops nobody.

On March 1, 1950, the Miami City Commission adopted a resolution ordering a local improvement to be made in certain downtown streets, denominated District H-477, by *resurfacing* the existing asphalt concrete pavement with a specified leveler course and wearing surface. Pursuant to the Charter, a notice of local improvement was published one time in the classified advertising section of the Miami Herald.[6] The body of the notice was as follows (R. 3):

> "All interested will take notice that at a meeting of the City Commission at 9:30 o'clock AM March 15, 1950, their objections will be heard to the confirmation of Resolution No. 22277, adopted March 1st, 1950, ordering paving improvements on the following avenues, to-wit:
>
> * * *
>
> Plans, specifications and estimate of cost of said improvement are on file in the City Clerk's office.
>
> F. L. Correll,
> City Clerk."

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[6]This paper is said to carry more advertising in its classified section than any other newspaper in the United States.

The notices in H-503 were identical, except as to streets, avenues, district numbers and dates (App. 8, R. 88).

It will be noted at once that the notice contains several glaring defects: it is indefinite as to the place where the objections would be heard; it is addressed to no one in particular; it does not designate the municipality which is involved in the work; and it gives no information as to the fact that special assessments were to be levied to pay for the improvement.

The rule with respect to the necessity of notice is stated in McQuillin, Mun. Corp. (3rd Ed.), Vol. 14, Sec. 38.98, as follows:

> "Before special assessments can be charged upon the property of private persons, the owners must be given notice thereof, with an opportunity to be heard and to contest, if desired, the validity and fairness of the assessment, otherwise there is a denial of due process of law in contravention of both the state and the federal constitution, and failure to give such notice and hearing, it is usually held, will render an assessment void whether or not notice is expressly required by law, unless, of course, the property owner waives the requirement that notice be given to him."

Decisions of this Court support the text.

Turpin v. *Lemon*, 187 U. S. 51.

Londoner v. *City & County of Denver*, 210 U. S. 373.

The Florida Supreme Court has held that failure to give notice will render the assessment void. *Ft. Myers* v. *State*, 95 Fla. 704, 117 So. 97.

A notice (including, we assume, even a personal one) in order to satisfy the requirements of due process must contain sufficient information as to time and place and must be such as that a person affected may, with reasonable effort, be enabled to attend and present his objections.

In *Bellingham Bay & B. C. R. Co.* v. *City of New Whatcom*, 172 U. S. 314, 319, involving special assessments, the Court said:

> "* * * And the time and place must be such that with reasonable effort he will be enabled to attend and present his objections."

From *City of Norfolk* v. *Young*, 97 Va. 728, 34 S. E. 886, we quote:

> "The notice * * * wholly failed to designate * * * a place where * * * the party to be affected had the right to appear to expose any alleged wrong in the assessment imposed upon him or his property."

In *City of Logansport* v. *Pollard*, 50 Ind. 151, it is said:

> "* * * the notice given * * * did not specify the place of the meeting of the commissioners and it was, therefore, in our opinion, insufficient. * * * These objections are fatal."

Here, however, the only notice which was given was by publication. As to residents this was plainly void.

Such indeed has been the holding of the Supreme Court of Florida. In *Rafkin* v. *City of Miami Beach*, Fla., 38 So. 2d 836, an attack was made upon special assessment proceedings conducted by the City of Miami Beach under a charter which is almost identical with that of the City of Miami. It was contended among other things that the notice of the special assessment proceedings was insufficient because it was published in the classified advertising section of the Miami Herald. In discussing this point the Court said:

> "* * * The notice in question did not meet the requirements contemplated by law, * * * it is so intermingled with other printed matter that one of ordinary

mind would not be put on notice that his rights were in danger."

Indeed, the Florida Court had within its own reports, cases in which pronouncements with respect to notice and due process were as strong in support of the Appellants' position as any in the country. In *Redman* v. *Kyle*, 76 Fla. 79, 80 So. 300, the Court reversed a decree which dismissed a complaint brought to attack the assessments levied by a drainage district upon the ground that the tax was levied without notice. The Court quoted, with approval, from *Londoner* v. *City and County of Denver*, 210 U. S. 373, and concluded its opinion in these words:

> "This fundamental principle assures that no one shall be divested of his property as a result of a suit, either judicial or in its nature judicial, without a fair and full opportunity to contest the claim set up against him, to meet it on the law and facts and show, if he can, that the pretext for making it is unfounded; and the hearing allowed must be such as is practicable and reasonable in the particular case, not merely colorable and illusory. 6 R. C. L. 451. Whatever right to a hearing accorded by the act in question to owners of land upon which the tax under consideration is imposed amounts merely to the shadow and not the substance to the shell, and not the fruit of the constitutional guaranty that no person shall be deprived of life, liberty, or property without due process of law."

Why the Court, in the face of concurring decisions of this Court, failed to follow its own precedents in the cases at bar, we cannot say.

Such opinions of this Court abundantly sustain our position.

In *Mullane* v. *Central Hanover Bank & Trust Company*, 339 U. S. 306, 315, the Court struck down a New

York Statute which provided for notice by publication against resident parties interested in the settlement of a common trust, consisting of over one hundred (100) separate trusts approximately half of which were *inter vivos* and the remainder testamentary. In an opinion by the late Mr. Justice Jackson, the Court said:

> "But when notice is a person's due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it. The reasonableness and hence the constitutional validity of any chosen method may be defended on the ground that it is in itself reasonably certain to inform those affected, compare Hess v. Pawloski, 274 U. S. 352; 71 L. Ed. 1091, 47 S. Ct. 632, with Wuchter v. Pizzutti, 276 U. S. 13, 72 L. Ed. 446, 48 S. Ct. 259, 57 A. L. R. 1230, or, where conditions do not reasonably permit such notice, that the form chosen is not substantially less likely to bring home notice than other of the feasible and customary substitutes.
>
> It would be idle to pretend that publication alone as prescribed here, is a reliable means of acquainting interested parties of the fact that their rights are before the courts. It is not an accident that the greater number of cases reaching this Court on the question of adequacy of notice have been concerned with actions founded on process constructively served through local newspapers. Chance alone brings to the attention of even a local resident an advertisement in small type inserted on the back pages of a newspaper, and if he makes his home outside the area of the newspaper's normal circulation the odds that the information will never reach him are large indeed. The chance of actual notice is further reduced when as here the notice required does not even name those whose attention it is supposed to attract, and does not inform acquaintances who might call it to attention. In weighing its sufficiency on the basis of equivalence

with actual notice we are unable to regard this as more than a feint.

* * *

We hold the notice of judicial settlement of accounts required by the New York Banking Law, § 100-c (12), is incompatible with the requirements of the Fourteenth Amendment as a basis for adjudication depriving known persons whose whereabouts are also known of substantial property rights. Accordingly the judgment is reversed and the cause remanded for further proceedings not inconsistent with this opinion."

In *New York* v. *New York, N. H. & H. R. Co.*, 344 U. S. 293, the City imposed liens on specific parcels of the railroad's real estate for street, sewer and other improvements. Proceedings for the reorganization of the railroad were had in the federal district court. That court issued an order directing creditors to file their claims by a prescribed date. Copies of that order were mailed to creditors who had appeared in court. Other creditors had to depend for their notice on two once-a-week publications of the order in five daily newspapers, one of which was the Wall Street Journal. New York City received no copy of the order and never filed its lien claims. The railroad then sued to have the city's lien claims declared unenforceable. The District Court and Court of Appeals held for the railroad. However, on appeal to the Supreme Court of the United States that holding was reversed. The Court in a unanimous decision said (pp. 296, 297):

"Section 77 (c) (8) of the Act states that 'The judge shall cause reasonable notice of the period in which claims may be filed, * * * by publication or otherwise,' 11 U. S. C. § 205 (c) (8), 11 U. S. C. A. § 205 (c) (8). We hold that publication of the bar order in newspapers cannot be considered 'reasonable notice' to New York under the circumstances of this case.

Notice by publication is a poor and sometimes a hopeless substitute for actual service of notice. Its justification is difficult at best. See Mullane v. Central Hanover Bank & Trust Co., 339 U. S. 306, 70 S. Ct. 652, 94 L. Ed. 865. But when the names, interests and addresses of persons are unknown, plain necessity may cause a resort to publication. See, e. g., Standard Oil Co. v. State of New Jersey, 341 U. S. 428, 71 S. Ct. 822, 95 L. Ed. 1078. The case here is different. No such excuse existed to justify subjecting New York's claims to the hazard of forfeiture arising from 'constructive notice' by newspaper. * * *

The statutory command for notice embodies a basic principle of justice—that a reasonable opportunity to be heard must precede judicial denial of a party's claimed rights. New York City has not been accorded that kind of notice."

A similar situation existed in *Walker* v. *City of Hutchinson*, 352 U. S. 112. In this case, the appellee City filed an action to condemn a part of the property of the appellant, Walker. Pursuant to a Kansas statute, three (3) Commissioners were appointed by the Court to determine compensation for the property. A local statute authorized notice to be given either in writing or in one publication in the official city paper. Appellant was not given notice in writing, but the publication was made as required. Damages were fixed and the amount deposited with the City Treasurer.

The statute authorized an appeal from the award of the Commissioners if taken within thirty (30) days after filing of their report. Appellant took no appeal within the prescribed period. Some time later, he brought an equitable action in the Kansas District Court alleging that he had not been notified of the proceedings, knew nothing about them, and charging that the newspaper publication

was not sufficient notice to satisfy the due process clause. In reversing the judgment of the State Supreme Court, this Court in an opinion by Mr. Justice Black cited *Mullane* v. *Central Hanover Bank & Trust Co.*, and said this:

> "Measured by the principles stated in the Mullane case, we think that the notice by publication here falls short of the requirements of due process. It is common knowledge that mere newspaper publication rarely informs a landowner of proceedings against his property. In Mullane we pointed out many of the infirmities of such notice and emphasized the advantage of some kind of personal notice to interested parties. In the present case there seem to be no compelling or even persuasive reasons why such direct notice cannot be given. Appellant's name was known to the city and was on the official records. Even a letter would have apprised him that his property was about to be taken and that he must appear if he wanted to be heard as to its value."

More recently this Court noted probable jurisdiction of a case involving the identical question here presented (*Wisconsin Electric Power Company* v. *City of Milwaukee*, 352 U. S. 948). In this case the Power Company brought suit in the Circuit Court for Milwaukee County attacking special assessments imposed upon property of the plaintiff by the City, on the ground that the only notice to the property owner of the imposition of the assessments was by publication in a local newspaper. The Circuit Court dismissed the suit and the Power Company appealed. The decree was affirmed by a divided court. Upon remand the plaintiff obtained leave to file an amended pleading, which was done and the cause was again dismissed. The Power Company again appealed, citing *New York* v. *New York, N. H. & H. R. Co.*, and *Mullane* v. *Central Hanover Bank & Trust Co.* The Court again affirmed the decree and the

Power Company appealed to this Court. This Court noted probable jurisdiction (352 U. S. 949) and remanded the case to the Supreme Court of Wisconsin for further consideration of the Federal question. On reconsideration the Supreme Court of Wisconsin said, 274 Wis. 121, 81 N. W. 2d 298:

> "In view of the determination made by the United States Supreme Court we hold that the constructive notice given by the defendant city by publication of the proposed special assessments against the plaintiff's land did not meet the requirements of due process. Mullane v. Central Hanover B. & T. Co., 1950, 339 U. S. 306, 70 S. Ct. 652, 94 L. Ed. 865, and Walker v. City of Hutchinson, 1956, 352 U. S. 112, 77 S. Ct. 200, 1 L. Ed. 2d 178. Therefore, it was error for the trial court to have sustained the general demurrer interposed to plaintiff's amended complaint."

More recently still, in *Lambert* v. *People of the State of California*, 355 U. S. 225, this Court said:

> "On the other hand, Due Process places some limits on its exercise. Engrained in our concept of Due Process is the requirement of notice. Notice is sometimes essential so that the citizen has the chance to defend charges. Notice is required before property interests are disturbed, *before assessments are made, before penalties are assessed.* Notice is required in a myriad of situations where a penalty or forfeiture might be suffered for mere failure to act. Recent cases illustrating the point are Mullane v. Central Hanover Bank & Trust Co., 339 U. S. 306, 70 S. Ct. 652, 94 L. Ed. 865; Covey v. Town of Somers, 351 U. S. 141, 76 S. Ct. 724, 100 L. Ed. 1021; Walker v. City of Hutchinson, 352 U. S. 112, 77 S. Ct. 200, 1 L. Ed. 2d 178."

No necessity existed which justified resort to constructive service in the cases at bar. The plaintiffs were resi-

dents and taxpayers of the City. The City had their names and addresses and actually mailed bills to them for the special assessment lien *after* the roll had been confirmed. This was the first time that actual notice was given to them of the special assessments. They promptly brought suit, and have diligently prosecuted the litigation ever since.

The possession by the bank of the names and addresses of the affected parties influenced the Court in the *Mullane* case, in it was held (339 U. S. 306, 318):

> "* * * Where the name and post office addresses of those affected by a proceeding are at hand, *the reasons disappear* for resort to means less likely than the mails to apprise them of its pendency."

and further (319):

> "* * * Moreover, the fact that the trust company has been able to give mailed notice to known beneficiaries at the time the common trust fund was established is persuasive that postal notification at the time of accounting would not seriously burden the plan."

The Florida Supreme Court's position that the property owners had failed to resort to the statutory method for review and hence were estopped to raise the question of benefits in a later plenary suit cannot be defended. This is so for these reasons:

1) If the administrative proceedings were void for lack of notice—as they were—they were subject to attack at any time. The Florida Supreme Court has so held. *Harvey* v. *City of St. Petersburg*, 138 Fla. 597, 189 So. 861; *Gulf View Apartments, Inc.*, v. *City of Venice*, 108 Fla. 41, 145 So. 842, and cf. *Milwaukee Electric Ry. & Light Co.* v. *Village of Shorewood*, (Wis.) 193 N. W. 94. This case held that an action to avoid a special assessment not

brought within the time prescribed by statute was nevertheless maintainable since the assessment was invalid because not based on benefits. This point was also directly ruled upon in the first majority opinion of the Supreme Court of Florida (R. 36) in which the Court (Thomas, J.) said:

> "The City had no inherent right to levy special assessments; such power could have been invested in it only by the legislature. City of Coral Gables v. Coral Gables, Inc., 119 Fla. 30, 160 So. 476. The power to assess for what was obviously repairs was lacking. The assessments were, therefore, void. The payment of assessments by some of the (fol. 38) owners would not operate as an estoppel because that doctrine is inapplicable when an assessment is void. Gulf View Apartments, Inc., et al. v. City of Venice, 108 Fla. 41, 145 So. 842. The appellees were entitled to the relief they sought and were granted."

2) The Charter (Section 56, (N)) provided a method for judicial review if invoked within ten (10) days from the confirmation of the assessment roll (App. 5). Having had no notice as to the hearing in which this resolution was entered the property owners likewise had no knowledge as to the entry of the confirming resolution. This was the act which set the statutory review period running. One may not be precluded from asserting his rights to attack an administrative order when he had no knowledge of the entry of such order;

Failure to resort to Court action for relief from an administrative judgment within a period prescribed by the administrative procedure presented no obstacle to the Court in affording the property owners relief in *Walker* v. *City of Hutchinson*, 352 U. S. 112.

3) The limitation on the time for review is itself so short (10 days) as almost to preclude the examination of the proceedings and the preparation of adequate pleadings.

In *Hayes* v. *Douglas County*, 92 Wis. 429, 65 N. W. 482, the headnote states:

> "A statute preventing a property owner from contesting the validity of an assessment for a public improvement after the expiration of forty days after proceedings therefor were commenced, based on constructive notice, is unconstitutional."

and in the opinion the Court holds:

> "While it is, no doubt, convenient and desirable, on the part of the municipality, that all questions in respect to the validity of such proceedings shall be put at rest as soon as may be, still there is no such exigency as to justify even an apparently unfair abbreviation of the rights of property owners or undue advantage taken. The time allowed should be ample to afford a reasonable probability that he would become informed of the proceedings against his property, and be fairly able to assert his right, before it is finally barred. It is considered that, plainly, this statute does not afford such reasonable opportunity, and cannot be sustained as a valid limitation. A short statute of limitation is not an allowable substitute for due process of law. It is utterly subversive of that constitutional protection to private rights of property. The fact that such short limitations have been sustained by some courts does not persuade the court that they are just and supportable on principle."

More to the point is the fact that the right of review is required to be exercised within ten days from the date of the confirmation of the assessment roll, yet no provision is made for notifying affected persons as to the time when this act was done. In the Hamilton case the assess-

ment roll was not confirmed on the return day of the newspaper notice but several days later. Yet this fact, on which a right to judicial relief is claimed to depend, was never communicated to the property owners.

In the light of these facts to hold that Appellants are estopped to complain is resort to sterile formalism. The city charter itself gave complaining property owners a right to resort to the courts for relief within ten days after the entry of the confirming resolution and this without having previously objected to the proceedings. In the Hamilton case, the property owners brought suit within forty-eight days from the date of confirmation, and the suitors in Ganger's case were not far behind. The result, therefore, of the Florida Supreme Court's opinion is that property owners have been denied the right to assert a want of benefit to their properties because they delayed for thirty-eight days to bring their suit. Surely, so short a delay will not prevent the raising of questions so substantial.[7]

Manifestly, the opinion of the Florida Supreme Court is wrong. "When notice is a person's due", the insufficiency of the notice cannot estop him from asserting his rights under the due process clause. Otherwise, constitutional guarantees would be scraps of paper.

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[7]There is a doubt as to whether the limitation on review is ten or twenty days. By Ch. 14229, Acts, 1929, the Legislature amended the City Charter by providing that the confirmation of an assessment roll "under Par. q of Sec. 56" should be final unless steps were taken in a court of competent jurisdiction within twenty days. Sec. q has no relation to the matter of protesting the assessment but whether the amendment is legally operative cannot be positively stated. The City has taken the position throughout that the limitation is ten days (R. 13). In any case, the amendment would seem to indicate legislative recognition that ten days was not long enough.

Another reason why it is inequitable to apply the doctrine of estoppel against the Appellants is that to do so would result in unlawful discrimination. The matter of this discrimination was raised on motion (R. 58) which disclosed that after throwing the double burden of original construction and subsequent resurfacing on the complaining taxpayers here, the City, with discriminating generosity, made similar improvements in nearby streets, some of which were continuations of streets in the districts here involved[8] or adjoined them (R. 16, 61) and made no assessment on the abutting lands.* We pressed this fact—discovered after the appeal had been taken—upon the Florida Supreme Court's consideration as further evidence of municipal wrong-doing. We argued that for the City to lay an assessment against some while doing the same

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[8]The district in the Hamilton case as noted in footnote 4 is H-477 and embraces, among others, Miami Avenue. The Ganger District is H-503. The new district referred to above is H-508 and includes Miami Avenue at the point where the resurfacing ended in District H-477.

*The record (59) contained an inter-departmental memorandum from the City Finance Director, in which he said:

> "On December 20, 1955, a memorandum was directed to you advising that Highway Improvement District H-508 was to be an assessment district.
>
> My attention has been called to the fact that the City Commission, at about the time this district was ordered, verbally declared all resurfacing work paid out of Florida Power and Light Bond Funds was *not* to be ASSESSED.
>
> Consequently after the district was ordered and confirmed, we purposely failed to adhere to the charter requirement of hearing objections to the completed work. This, in effect, made the district invalid as far as assessments were concerned.
>
> Although pending liens exist against the District's properties, the City Attorney's office, upon being contacted to determine the method of removing the liens, deemed such action inadvisable at that time because of litigation of other districts of a similar nature. (fol. 63) As soon as clearance is received from the Law Department, we will arrange to have the pending liens removed by Commission Action."

work, without charge, in the same neighborhood for others, would violate constitutional guaranties as to equal protection of the law. Like the appeal with respect to the insufficiency of the notice, this plea against discrimination fell on deaf ears.

The City's action in the instant cases is unconscionable. The streets had originally been paved at the expense of the abutting owners. The work which was done amounted to repair, which actually is maintenance for which the public is responsible. The work was paid for out of *surplus* funds which had been accumulated in the City's general fund for several years (R. 6). Therefore, the statement in the Florida Supreme Court's opinion (R. 40) that to permit this suit to be maintained would be disastrous to the fiscal affairs of the City is pointless. This fact also completely refutes the statement in the same opinion (*id.*) that the charter requirements afford the City the opportunity of financing such improvements, the implication being that such suits might prevent this. Expediency has never been considered a substitute for the observance of constitutional rights. If it were, there would be little need for written constitutions, which are a constant reminder that ends do not justify means. But the suggestion that municipal opportunity would be frustrated by these proceedings is as inaccurate as it is illogical. Here the funds for the work were already in the till and actually the City was simply reimbursing itself for work which actually it was obligated to do.

The hearing accorded the taxpayers by the newspaper notice was, to borrow from the Florida Supreme Court's statement in *Redman* v. *Kyle*, 76 Fla. 79, 80 So. 300, merely the shadow and not the substance, was nothing but the shell and not the fruit of the constitutional guaranty against the deprivation of property without due process of law.

CONCLUSION.

The opinions and orders of the Supreme Court of Florida, insofar as they held that the notices in question were valid and that the determination by the Commission of the City of Miami as to benefits which were based on such notices estopped the property owners from showing a lack of benefits are contrary to the opinions and judgments of this Court in the cases cited herein, and particularly *Wisconsin Electric Power Co.* v. *City of Milwaukee*, 352 U. S. 948. Therefore, the judgments of the Supreme Court of Florida in both cases should be reversed with directions to affirm the final decrees of the Circuit Court of the Eleventh Judicial Circuit of Florida, in and for Dade County.

Respectfully submitted,

.....,

CLYDE EPPERSON,

.....,

HERBERT L. NADEAU,

.....,

THOMAS H. ANDERSON.

CLYDE EPPERSON,
Ingraham Building,
Miami 32, Florida,

ANDERSON & NADEAU,
908 First National Bank Building,
Miami 32, Florida,
Attorneys for Appellants.

I, Thomas H. Anderson, one of the attorneys for the appellants herein, and a member of the Bar of the Supreme Court of the United States, certify that on the _____ day of January, 1959, I served a copy of the foregoing Appellants' Brief on the City of Miami by mailing a copy in a duly addressed envelope with sufficient postage prepaid to carry the said Brief to Milton M. Ferrell, the City Attorney for the City of Miami, Five Fifty Building, 550 Brickell Avenue, Miami 32, Florida.

THOMAS H. ANDERSON,
908 First National Bank Building,
Miami 32, Florida,
Attorney for Appellants.

APPENDIX

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Resolutions and Notices

District H-503

(Ganger Case)

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District H-477

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CHARTER OF THE CITY OF MIAMI, CHAPTER 10847, LAWS OF FLORIDA, 1925.

Sec. 56. Improvements.

(A) Class 1. Highway improvements embrace the grading, paving, re-paving, macadamizing and re-macadamizing of highways, with necessary drainage, sewer inlets, manhole and catch basins and, if the commission so orders, may embrace curbs and gutters.

(C) **Initial proceeding by resolution of commission.** The initial proceedings for a local improvement hereunder shall be the passage at a regular or special meeting of the commission of a resolution ordering the same to be made under this section, indicating the location by terminal points and route, and either giving a description of the improvement by its material, nature, character and size, or giving two or more such descriptions with the direction that the material, nature, character and size be subsequently determined in conformity with one of such descriptions. A single resolution may embrace one improvement only or one improvement of each of two or more classes of improvements. An improvement need not be continuous and may be in more than one locality or highway, but a highway or sidewalk improvement shall be practically uniform in cost and kind throughout the improvement, and a sanitary sewer improvement shall not provide for a curb sewer as a part of the improvement, and a sewer at or near the middle of a high-

way as another part. Nothing herein contained shall prevent the commission from excluding from any highway improvement that portion of the highway which has been improved by any railroad or any portion which the city may, under the franchise or contract with such railroad, require it to improve. If the resolution shall order a waterfront improvement or storm sewer improvement, it shall designate the property which the commission deems will be specially benefited thereby, and, if a waterfront improvement be ordered, the resolution shall indicate the proportion of the cost thereof which shall be borne by the city at large, and the proportion thereof which shall be specially assessed. A resolution may give any short and convenient designation to each improvement ordered thereby, and the property against which assessments are to be made for the cost of such improvement shall be designated as a district, followed by a letter or number or name to distinguish it from other districts, after which it shall be sufficient to refer to such improvement and property by such designations in all proceedings, assessments and bonds, except in the notice provided by paragraph (e) of this section.

(E) **Publication of notice of hearing.** The city clerk, upon the filing with him of such plans, specifications and estimates, shall publish once in a daily newspaper of general circulation published in the city a notice stating that at a meeting of the commission on a certain day and hour, not earlier than ten days from such publication, the commission will hear the objections of all in-

terested persons to the confirmation of said resolution, which notice shall state in brief and general terms a description of the proposed improvement with the location thereof, and shall also state that plans, specifications, and estimates of the cost thereof are on file in the office of the city clerk.

(F) **Hearing objections; repeal or confirmation.** At the time named in said notice, or to which an adjournment may be taken, the commission shall receive any objections of interested persons and may then or thereafter repeal or confirm said resolution with such amendments, if any, as may be desired by the commission and which do not change in any way, the location of the improvement or improvements; provided, however, that such resolution shall not then or thereafter be confirmed if it contains items which cannot be properly charged to the property owners or if it is, for any default or defect in the passage or character of the resolution or estimate, void or voidable in whole or in part, or if it exceeds the power of the commission, and if any objection shall be made to the resolution on any such ground as provided by the paragraph (h) hereof.

(H) **Manner of making objections.** All objections to any improvement resolution on the grounds that it contains items which cannot be properly charged to the property owners, or that it is, for any default or defect in the passage or character of the resolution or estimate, void or voidable in whole or in part, or that it exceeds the power of the legislative body of the municipality, shall be made in writing, in person or by attorney, and

filed with the city clerk at or before the time or adjourned time of such hearing. Any objections against the making of an improvement not so made shall be considered as waived, and if an objection shall be made and overruled or shall not be sustained, the confirmation of the resolution shall be the final adjudication of the issue presented unless proper steps shall be taken in a court of competent jurisdiction to secure relief within ten days.

(J) (n) **Assessment of Individual Lots. According to special benefits or frontage.** The amount of the cost of water front improvements and storm sewers, excluding laterals, so apportioned to lots and parcels of land, shall in said roll be assessed to the several lots and parcels within the district in the proportion which the city manager deems to be in the proportion of special benefits each such lot or parcel will receive, and the amount of cost of each highway, sidewalk and sanitary sewer improvement, except laterals, so apportioned to abutting property shall be assessed in said roll against such abutting property according to frontage.

(L) **Notice of hearing after filing preliminary assessment roll.** Upon the filing with the city clerk of the preliminary assessment roll required by this section, the city clerk shall publish once in each of two successive weeks in a daily newspaper of general circulation published in the city, a notice stating that at a regular meeting of the commission held on a certain day and hour, not less than twelve days from the date of the first publication, all interested persons may appear and file written objections to the confirmation of said roll.

(M) **Hearing objections and actions thereon.** At the time and place stated in such notice the commission shall meet and receive the objections in writing of all interested persons as stated in said notice. Then or thereafter, the commission shall either annul or sustain or modify in whole or in part the *prima facie* assessment as indicated on said roll, either by confirming the *prima facie* assessment against any or all lots or parcels described therein, or by cancelling, increasing or reducing the same, according to the special benefits which said commission decides each said lot or parcel has received, or will receive on account of such improvement. If any property which may be chargeable under this section shall have been omitted from said preliminary roll or if the *prima facie* assessment has not been made against it, the commission may place on said roll an apportionment to said property. The commission may thereupon confirm said roll, but shall not confirm any assessment in excess of the special benefits to the property assessed, and the assessments so confirmed shall be in proportion to the special benefits. Forthwith after such confirmation said assessment roll shall be delivered to the director of finance, and such confirmation shall be final and conclusive except as hereinafter provided.

(N) **Appeal to court.** If the owners of any railroad, or any lot or parcel of land so assessed shall within ten days from such confirmation file a written verified petition in the office of the clerk of the circuit court of Dade County, setting forth that the amount so assessed against any property of the petitioner exceeds the amount of the

special benefit the petitioner has sustained or will sustain by reason of such improvement, or is out of proportion to benefits, or that the assessment is invalid, for any reason whatsoever, and shall at the same time file with said clerk a written undertaking in at least the sum of two hundred dollars ($200.00), with a good and sufficient surety to be justified before and approved by the said clerk, to the effect that the petitioner will pay to said city all costs and damages to be sustained by it by reason of such proceeding, and shall, within ten (10) days from such confirmation, deliver (to) the city manager or leave in his office a copy of said petition, then the validity of such assessment against said property shall be determined as hereinafter provided. Within ten (10) days after the delivery of said copy of petition then the validity of such assessment against said property shall be determined as hereinafter provided. Within ten (10) days after the delivery of said copy of petition to the city manager or, at his office, the city manager shall appear and answer the said petition, and the case shall be heard upon such petition and answer and upon such evidence as may be presented to the court. The judge of the court shall hear and determine the cause, in term or vacation, giving such hearing and determination precedence over all other cases so far as the same may be practicable. The decision of the court in such proceedings shall be final, and an appeal shall be allowed only if properly prayed and perfected ten (10) days from the date of the order; if the assessment against such property shall be sustained or reduced or abated by the court, the

director of finance shall note that fact on the assessment roll opposite the description of the property whose assessment was so contested; the cost of any such proceedings shall be paid by the party complaining of such assessment, unless the said assessment is abated or is reduced by the court ten per cent (10%) or more, and judgment shall be rendered against him for the amount of such cost; in case such assessment shall be abated or shall be reduced ten per cent (10%) or more, such costs and expenses shall be paid by the city and judgment shall be entered against it for the amount thereof.

(O) **Amount of assessment set aside by court may be charged to city or new assessment roll may be prepared.** The amount of the special assessment against any lot or parcel which may be set aside by the court, unless the assessment upon the entire district be set aside, or the amount by which such assessment is so reduced, may by resolution of the commission be made chargeable against the city at large; or, in the discretion of the commission a new assessment roll may be prepared and confirmed in the manner hereinbefore provided for the preparation and confirmation of the original assessment roll, except that no notice of hearing upon such roll need be published or given as to any property unless the assessment against it is increased. The commission shall take prompt action as herein provided in case of the reduction or invalidation of any assessment, and any such action shall be noted by the director of finance on said assessment roll, unless a new roll shall be made and confirmed, in which case the

former roll shall be a nullity and the right of petition to the circuit court as to the amounts apportioned by the new roll shall again be in force as to such new roll.

RESOLUTION NUMBER 25006.

Highway Improvement District H-503.

A RESOLUTION ORDERING LOCAL IMPROVEMENT H-503 BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF MIAMI: That a local improvement, described and designated as follows, shall be made under Section 56 of the City Charter:

Highway Improvement H-503 as follows:

ON:

South Miami Avenue, from S. W. 15th Street Road to 200′ more or less south of Alatka Street.

This street shall be resurfaced from curb to curb with approximately 1/2″ leveling course and 1″ surface course of asphaltic concrete, including returns and intersections.

The property against which special assessments for the cost thereof shall be made is hereby designated District H-503.

PASSED AND ADOPTED this 19th day of November, 1952.

Filed in Evidence
7/22/54
Plff. Ex. #10

THE MIAMI HERALD
Published Daily
Miami - Dade - Florida

STATE OF FLORIDA
COUNTY OF DADE:

Before the undersigned authority personally appeared M. F. Self, who on oath says that he is Classified Advertising Manager of The Miami Herald, a daily newspaper published at Miami in Dade County, Florida; that the attached copy of advertisement, being a ..... in the matter of ..... in the ..... Court, was published in said newspaper in the issues of November 22, 1952.

(s) M. F. Self

Sworn to and subscribed before me this 22nd day of November, A.D. 1952.

(s) J. Fenwick Brossier
Notary Public, State of Florida at Large

My commission expires June 12, 1956.

Filed in Evidence
7/22/54

Plff. Ex. #10

NOTICE OF LOCAL IMPROVEMENT

Highway Improvement District 503

All interested will take notice that at a meeting of the City Commission at 9:30 o'clock A. M. December 3rd, 1952, their objections will be heard to the confirmation of Resolution No. 25006, adopted November 19th, 1952, ordering paving improvements on South Miami Avenue, from S. W. 15th Street Road to 200′ more or less south of Alatka Street, designated improvement H-503. Plans, specifications and estimate of cost of said improvement are on file in the City Clerk's office.

F. L. CORRELL
City Clerk

November 22, 1952

RESOLUTION No. 25017.

A Resolution Confirming the Ordering Resolution for Paving Improvements Included in Highway Improvement District H-503.

WHEREAS, at a meeting of the City Commission at 9:30 a. m., December 3rd, 1952, objections were heard to the confirmation of Resolution No. 25006, adopted November 19th, 1952, ordering local paving improvements in the area designated as Highway Improvement District H-503, and the plans, specifications and estimates of cost thereof, and no objections were filed;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF MIAMI, FLORIDA:

Section 1. That Resolution No. 25006, adopted November 19th, 1952, ordering local paving improvements in the area designated as Highway Improvement District H-503 be, and the same is hereby, confirmed.

PASSED AND ADOPTED this 3rd day of Dec., 1952.

Filed in evidence
7/22/54

Plaintiffs' Exhibit #10

THE MIAMI HERALD
Published Daily
Miami - Dade - Florida

STATE OF FLORIDA,
COUNTY OF DADE:

Before the undersigned authority personally appeared M. F. Self, who on oath says that he is Classified Advertising Manager of The Miami Herald, a daily newspaper published at Miami in Dade County, Florida; that the attached copy of advertisement, being a ..... in the matter of ..... in the ..... Court, was published in said newspaper in the issues of January 19, 26, 1954.

(s) M. F. Self

Sworn to and subscribed before me this 28th day of January, A. D. 1954.

(s) J. Fenwick Brossier
Notary Public,
State of Florida
at Large.

My Commission expires June 12, 1956.

Filed in Evidence
7/22/54

Plff Ex. #10

NOTICE TO PROPERTY OWNERS

Preliminary Assessment Roll District H-503

All interested will take notice that at a meeting of the City Commission at 9:30 o'clock AM February 3rd, 1954, their objections will be heard to the confirmation of the Preliminary Assessment Roll for the cost of paving improvements on South Miami Avenue, from SW 15th Road to 320 feet more or less South of Alatka Street, in District H-503.

Said Preliminary Assessment Roll is now open to public inspection in the City Clerk's Office.

F. L. CORRELL
CITY CLERK

Jan 19, 26: 1954

RESOLUTION No. 26250.

A Resolution Confirming the Preliminary Assessment Roll for Construction of Certain Paving Improvements in a Portion of Highway Improvement District H-503.

WHEREAS, the Commission of the City of Miami, Florida, met on the 3rd day of February, 1954, pursuant to due legal notice of said meeting under Secton 56, City Charter to hear all written objections to the confirmation of the preliminary assessment roll for the cost of paving improvements, as follows:

South Miami Avenue from S. W. 15th Road to 320 feet, more or less South of Alatka Street

in a portion of Highway Improvement District H-503, and

WHEREAS, no objections thereto were made by any person interested in, or affected by said assessment roll and the said assessment roll appearing, in all respects, regular and in accordance with the requirements and provisions of the City Charter;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF MIAMI, FLORIDA:

Section 1. That the *prima facie* assessments, as apportioned and indicated on said preliminary assessment roll be, and they are hereby, in all things, confirmed and sustained against any and all lots or parcels of ground described therein.

Section 2. That the sums and amounts assessed against each of the lots or parcels of ground in said preliminary rolls are less than the amount that each of the said lots or parcels of ground is especially benefited by said improvement and that such amounts are in proportion to the special benefits that the property received and that the proportion of said costs to be paid by the City of Miami are the sums set forth opposite the same therein.

Section 3. That the total cost of the said paving improvements in the sum of $41,395.48 be, and the same is hereby, approved and confirmed.

PASSED AND ADOPTED this 18 day of Feb., 1954.

Filed in evidence
7/22/54
Plaintiffs' Exhibit #10

RESOLUTION No. 22277.

Highway Improvement H-477 District. A Resolution Ordering Local Improvement H-477.

BE IT RESOLVED by the City Commission of the City of Miami: That a local improvement, described and designated as follows, shall be made under Section 56 of the City Charter: . .

Highway Improvement H-477 as follows (names of some streets omitted):

For resurfacing of existing asphaltic concrete pavement with a fifty pound (50 #) asphalt concrete leveler course and one inch (1") asphaltic concrete wearing surface, including necessary intersection returns and intersections.

The property against which special assessments for the cost thereof shall be made is hereby designated District H-477.

PASSED AND ADOPTED this 1st day of Mar., 1950.

Filed in evidence

Defendant's Exhibit #1
7/20/54
M. C. W.

THE MIAMI HERALD
Published Daily
Miami - Dade - Florida

STATE OF FLORIDA
COUNTY OF DADE:

Before the undersigned authority personally appeared M. F. Self, who on oath says that he is Classified Advertising Manager of The Miami Herald, a daily newspaper published at Miami in Dade County, Florida; that the attached copy

NOTICE OF LOCAL IMPROVEMENT

Highway Improvement
District H-477

All interested will take notice that at a meeting of the City Commission at 9:30 o'clock A. M. March 15th, 1950, their objections will be heard to the confirmation of Resolution No. 22277, adopted March 1st, 1950, ordering paving improvements on

of advertisement, being a ..... in the matter of ..... in the ..... Court, was published in said newspaper in the issues of

3/4, 1950

(s) M. F. Self

Sworn to and subscribed before me this 6th day of March, A. D. 1950.

(s) Louise Muhleman

Notary Public, State of Florida at Large

My commission expires Nov. 4, 1953.

Bonded by American Surety Co. of N. Y.

Filed in Evidence 7/22/54

Defendant's Exhibit "C"

the following avenues, to-wit:

NE. 1st Avenue from S. E. 2nd Street to N. E. 14th Street; NE. 2nd Avenue from Flagler Street to 41st Street; N. W. and S. W. 3rd Avenue from S.W. 1st Street to N. W. 20th Street; South Miami Avenue from S. W. 1st Street to S. W. 15th Road; North Miami Avenue from Flagler Street to N. W. 20th Street; N. W. 2nd Avenue from N. W. 20th Street to N. W. 36th Street; S. W. 17th Avenue from Flagler Street to Tamiami Trail.

Designated Improvement H-477. Plans, specifications and estimate of cost of said improvement are on file in the City Clerk's Office.

F. L. CORRELL
City Clerk

3-4-50

RESOLUTION No. 22301.

A Resolution Confirming Resolution No. 22277 Ordering Paving Improvement in Highway Improvement District H-477.

WHEREAS, at a meeting held at 9:30 o'clock A. M., March 15, 1950, after legal notice, the City Commission heard all objections presented by interested persons to the confirmation of Resolution No. 22277, ordering Highway Improvement District H-477, which included construction on the following streets (names omitted):

and the plans and specifications and estimate of cost thereof, and no objections were sustained;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF MIAMI, FLORIDA:

That Resolution No. 22277, adopted March 1st, 1950, ordering Highway Improvement District H-477, be, and the same is hereby confirmed.

PASSED AND ADOPTED this 15th day of Mar., A. D. 1950.

Filed in Evidence

Defendant's Exhibit #1

7/20/54

Marshall C. Wisheart

MIAMI DAILY NEWS
Published Daily
Miami, Dade County,
Florida

STATE OF FLORIDA,
COUNTY OF DADE:

Before the undersigned authority personally appeared Jacob Booth who on oath says that he is Controller of the Miami Daily News, a daily newspaper published at Miami in Dade County, Florida; that the attached copy of advertisement being legal notice in the matter of Preliminary Assessment Roll — District H-477 in the ..... Court, was published in said newspaper in the issues of February 20 & 27, 1953.

(s) Jacob Booth

Sworn to and subscribed before me this 27th day of February, A. D. 1953.

(s) Roland Wilfred Vandson

(Seal) Notary Public, State of Florida at Large

My commission expires May 15, 1955.

Bonded by American Surety Co. of N. Y.

Filed in Evidence

Defendant's Exhibit "F"

NOTICE TO PROPERTY OWNERS

Preliminary Assessment Roll District H-477

All interested will take notice that at a meeting of the City Commission at 9:30 o'clock A. M. March 4th, 1953, their objections will be heard to the confirmation of the Preliminary Assessment Roll for the cost of paving improvements on the following Avenues, to-wit:

SE & NE 1st Ave. from SE 2nd St. to N. E. 14th St.; N. Miami Ave. from Flagler St. to North 20th St. in District H-477.

Said Preliminary Assessment Roll is now open to public inspection in the City Clerk's Office.

F. L. CORRELL
CITY CLERK

RESOLUTION No. 25364.

A Resolution Confirming the Preliminary Assessment Roll for Construction of Certain Paving Improvements in a Portion of District H-477.

WHEREAS, the Commission of the City of Miami, Florida, met on the 4th day of March, 1953, pursuant to due legal notice of said meeting under Section 56, City Charter, to hear all written objections to the confirmation of the preliminary assessment roll for the cost of paving improvements on the following avenue:

N. E. 2nd Avenue from Flagler Street to N. E. 41st Street in District H-477.

WHEREAS, no objections thereto were made by any person interested in or affected by said assessment roll and the said assessment roll appearing in all respects regular and in accordance with the requirements and provisions of the City Charter;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF MIAMI, FLORIDA:

Section 1. That the *prima facie* assessments, as apportioned and indicated on said preliminary assessment roll be, and they are hereby, in all things, confirmed and sustained against any and all lots or parcels of ground described therein.

Section 2. That the sums and amounts assessed against each of the lots or parcels of ground in said preliminary roll are less than the amount that each of the said lots or parcels of ground is especially benefited by

said improvement and that such amounts are in proportion to the special benefits that the property received and that the proportion of said costs to be paid by the City of Miami are the sums set forth opposite the same therein.

Section 3. That the total cost of the said improvements in the sum of $55,001.13 be, and the same is hereby, approved and confirmed.

PASSED AND ADOPTED this 18th day of Mar., 1953.

Filed in evidence

Defendant's Exh. #1

7/20/54

Marshall C. Wiseheart

(The City, the same day, passed Resolutions Nos. 25365, 25366, 25367 and 25368, with respect to District H-477 which are identical with the foregoing resolution except as to the description of the streets and the amount of assessment.)